

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 875

Landlord-Tenant Relations

SPONSOR(S): Jones

TIED BILLS: None

IDEN./SIM. BILLS: SB 1038

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----|--|--------|---------|----------------|
| 1) | Civil Justice & Courts Policy Committee | | Bond | De La Paz |
| 2) | Insurance, Business & Financial Affairs Policy Committee | | | |
| 3) | Criminal & Civil Justice Policy Council | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Under current law, tenants are sometimes given as little as one day's notice that the home they rent was sold at foreclosure sale and they are being evicted. This bill:

- Requires every landlord to notify the mortgage holder of every lease and every change in the rental agreement.
- Provides that a tenant must be named as a defendant in a foreclosure action and must be given a copy of all of the pleadings.
- Requires a lender to pay the security deposit into the court registry.
- Requires a purchaser at a foreclosure sale to give a tenant 60 days notice before eviction.
- Requires a landlord to give a current or prospective tenant notice of a foreclosure proceeding.

This bill does not appear to have a fiscal impact on state or local government. This bill may impose significant fiscal impacts on the private sector.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Landlord - Tenant Law

The Florida Residential Landlord and Tenant Act, first enacted in 1973, governs the relationship between landlords and tenants in a residential lease agreement.¹ A rental agreement specifies the terms and conditions of a tenant's occupation in a dwelling unit for a specific period of time.² The provisions of the Act specifically address the payment of rent,³ duration of leases,⁴ security deposits,⁵ maintenance of the dwelling and premises,⁶ termination of rental agreements,⁷ liquidated damages for failure to provide notice before vacating,⁸ penalty for holding over,⁹ and a landlord's remedies for the breach of a lease.¹⁰

Foreclosures

According to RealyTrac, 46,391 new foreclosures were filed in Florida in February 2009, which brings foreclosure filings up to 87,161 in Florida for 2009.¹¹ Under current law, an owner is provided notice when a foreclosure proceeding has been filed against him or her.¹² However, Florida law does not provide for notice to tenants when the dwelling unit they are renting is involved in a foreclosure proceeding. Therefore, even if a tenant is paying their rent on time, in some cases a tenant may not receive more than 24 hours notice of an eviction.

¹ Part II of ch. 83, F.S. This part applies to the rental of a "dwelling unit" which is defined as a structure or part of a structure rented for use as a home, residence or sleeping place. It also includes mobile homes rented by a tenant. Section 83.43, F.S.

² Section 83.43(7), F.S., provides that: "Rental agreement" means any written agreement, or oral agreement if for less duration than 1 year, providing for use and occupancy of premises.

³ Section 83.46, F.S.

⁴ *Id.*

⁵ Section 83.49, F.S.

⁶ Sections 83.51 and 83.52, F.S.

⁷ Section 83.56, F.S.

⁸ Section 83.58, F.S.

⁹ Section 83.575, F.S.

¹⁰ Section 83.595, F.S.

¹¹ See <http://www.realtytrac.com/MapSearch/Florida.html?a=b&acct=&selStatus=>. Last accessed March 25, 2009.

¹² Section 702.10, F.S.

Effect of Bill

This bill provides that if a dwelling unit is rented out and is subject to a note or mortgage, then the landlord or his or her agent must notify the mortgagee in writing that the premises is being rented within 30 days from when the rental agreement is signed. The notice must state the name of the tenant, the length of time of the rental agreement, and the address of the dwelling unit that is subject to the rental agreement. In addition, the landlord must give the tenant a copy of the notice at the time he or she notifies the mortgagee. This bill requires the landlord or his or her agent to notify the mortgagee of any change in the rental agreement within 14 days of learning of the change.

This bill provides that each tenant is a party to a proceeding to foreclose any note or mortgage regarding the premises subject to the rental agreement. Therefore, the tenant is entitled to notice of all foreclosure proceedings. Upon notice of a foreclosure proceeding on the premises, the landlord must pay any deposit money received from the tenant under the rental agreement into the registry of the court no later than 14 days after receipt of the notice of foreclosure.

Any purchaser who receives a certificate of title on foreclosed premises subject to rental agreements may take possession of the premises no more than 60 days after the tenant has been given written notice of the foreclosure. The purchaser must give notice to each tenant by registered mail, return receipt requested. The notice must state that the premises have been sold and the purchaser desires to take possession of the premises.

Finally, this bill provides that a landlord or the landlord's agent who rents a dwelling unit subject to a note or mortgage must inform prospective or current tenants if the premises is in foreclosure proceedings or if there are causes that to the best of the landlord's or his or her agent's knowledge may cause the premises to be subject to a foreclosure proceeding.

B. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law regarding foreclosure notice provisions.

Section 2 provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Minimal indeterminate, see Fiscal Comments.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill imposes reporting and recordkeeping requirements applicable to all landlords in the state and to every lending institution in the state.

Under current law, a purchaser at a foreclosure sale may take possession of the property as soon as eleven days after the sale. Subsection (4) extends this to 60 days after the sale, which would have the apparent effect of giving tenants two months free rent while depriving the purchaser at the sale of the possibility of two months rent and subjecting the property to two months depreciation.

D. FISCAL COMMENTS:

New subsection (3) requires a landlord in foreclosure to pay a tenant's deposit into the clerk's registry. Clerks charge a statutory fee for placing money into the registry of the court, and keep interest earnings on such funds while such funds are held.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

At line 60, the bill refers to notice by registered mail. Section 1.01(11), F.S., defines the term "registered mail" to include certified mail.

This bill does not provide any penalties or fines if a person does not comply with the requirements imposed by this bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

n/a